

VILLAGE OF MIDWAY

POLICY AND PROCEDURES MANUAL  
RISK MANAGEMENT POLICY STATEMENT

REGULATE TRAFFIC SECTION 120 OF THE MOTOR VEHICLE ACT

POLICY NO. 305

1. It is the policy of Council that they consider that the volume of local and through traffic in and around the municipality and the need to regulate and control same; and
2. The Council has considered the cost of regulating traffic, including the cost of installing and maintaining traffic control devices, and of enforcing such regulation; and
3. The Council has considered its resources and revenue with relation to the cost of regulating traffic to determine the economic feasibility of undertaking the regulation of traffic within the municipality; therefore
4. Be it resolved that the Village does not take any action to regulate traffic within the corporation under section 120 of the Motor Vehicle Act; and
5. Be it further resolved that the Council may from time to time vary this policy by bylaw on any specific item or area of traffic control that the Council may from time to time consider to be requisite and necessary.
6. Also refer to Public Works Policy 200, Section 2 "Traffic Control"

The above policy was approved by Council January 21, 1985.

REVIEWED AND AMENDED TO REFLECT NEW  
POLICY NO. 305 AND PARAGRAPH 6,  
Approved by Council  
February 15, 1999.

(OLD POLICY NO. 330)

# McQUARRIE HUNTER

BARRISTERS & SOLICITORS

WATSON T. HUNTER, Q.C. (1972)

J. GLENN GATES  
THEO G. PEARCE  
W. A. OWEN McQUARRIE  
M. G. TYLER  
MICHAEL KENDLER  
COLIN J. HUGGETT  
KIM M. R. FLOECK  
RICHARD D. MOLSTAD  
ROBERT W. COLLINGS

B. JERRY PETTENUZZO  
MARLENE H. SCOTT, Q.C.  
ROBERT CRAWFORD  
DAVID J. BRINE  
PAUL E. LEVY  
JAMES N. ARNOLD  
A. C. McQUARRIE  
BETTY A. CAMERON

Associate Counsel: COLIN D. McQUARRIE, Q.C.

VILLAGE OF MIDWAY  
RECEIVED JAN 11 1985

TELEPHONE 581-0461  
AREA CODE 604  
CABLE ADDRESS "WESTLAW"

10619 KING GEORGE VI HIGHWAY  
P. O. BOX 530

SURREY

BRITISH COLUMBIA V3T 5B7  
CANADA

REPLY ATTENTION: Mr. Pearce  
OUR FILE NO. B85-1010

Corporation of the Village of Midway  
Box 160  
Midway, B. C.  
VOH 1M0

Attention: R. J. Hatton,  
Municipal Clerk

Dear Sirs:

re: Regulation of Traffic

Your letter of December 18, 1984 was received on December 27, 1984 and, as requested, we enclose herewith a draft Resolution that might be adopted by your Council. As indicated previously, the purpose of this Resolution is to indicate that Council has exercised its discretion and has elected not to adopt a traffic regulatory by-law. By such action, Council may avoid liability arising out of a failure to regulate traffic on the grounds that it has adopted a legislative policy not to regulate same. The Supreme Court of Canada has indicated that the bona fide exercise of a discretion by a municipality will not be lightly interfered with.

In reply to the second paragraph of your letter, the Village has no jurisdiction to install any traffic control devices without the authority of a by-law. Stop signs, so erected, cannot be enforced. We do not, however, see any objection to erecting a sign indicating the existence of a "PlayGround" but its only effect might be to warn users of the road of such existence.

We would therefore strongly suggest that if you intend to erect and maintain any traffic signs within the Corporation that a by-law be passed authorizing same.

We trust this letter will be of some assistance to you and enclose herewith our account for services rendered on your behalf.

Yours truly,

THEO. G. PEARCE

TGP/ms  
Encls.

① Tami  
Copy for Council  
fwd with By-law

② Ref Page 1573  
of our minutes

Attach to  
By-law 330

# McQUARRIE HUNTER

BARRISTERS & SOLICITORS

WATSON T. HUNTER, Q.C. (1972)

J. GLENN GATES  
THEO G. PEARCE  
W. A. OWEN McQUARRIE  
M. G. TYLER  
MICHAEL KENDLER  
COLIN J. HUGGETT  
KIM M. R. FLOECK  
RICHARD D. MOLSTAD  
ROBERT W. COLLINGS

B. JERRY PETTENUZZO  
MARLENE H. SCOTT, Q.C.  
ROBERT CRAWFORD  
DAVID J. BRINE  
PAUL E. LEVY  
JAMES N. ARNOLD  
A. C. McQUARRIE  
BETTY A. CAMERON

Associate Counsel: COLIN D. McQUARRIE, Q.C.

TELEPHONE 581-0461  
AREA CODE 604  
CABLE ADDRESS "WESTLAW"

10619 KING GEORGE VI HIGHWAY  
P. O. BOX 530

SURREY

BRITISH COLUMBIA V3T 5B7  
CANADA

REPLY ATTENTION: Mr. Pearce  
OUR FILE NO.

November 22, 1984

Corporation of the Village of Midway  
Box 160  
Midway, B. C.  
VOH 1M0

Attention: R. J. Hatton,  
Municipal Clerk

Dear Sirs:

re: Regulation of Traffic

We have been handed your letter dated October 15, 1984 addressed to the U.B.C.M. and requested by Mr. McKelvey to comment thereon. He further indicated that you had certain questions with regard to the erection of road markers in school areas and the installation of school crossings.

As you are probably aware, the power of a Municipality to regulate traffic is found in Section 120 of the Motor Vehicle Act, R.S.B.C. 1979, Chapter 288. Under that Section, the Council of a Municipality may by by-law provide for the regulation of traffic. In particular, sub-section (1)(o) provides that the Municipality may regulate traffic passing by or in the vicinity of schools by way of traffic patrols, etc. You should note, however, that any such regulations must be done by by-law.

It is difficult at the moment to advise Municipalities as to their liability to persons using highways with or without a by-law. The Supreme Court of Canada in Nielsen vs. Kamloops (unreported July 26, 1984) imposed upon Municipalities a duty to enforce the by-laws of the Municipality. If therefore you pass a by-law regulating traffic, there would appear to be a duty on your Municipality to enforce such regulations. The failure to do so may result in liability to your Municipality. We have used the word "may" deliberately as if the by-law is properly framed and resolutions adopted by Council as to the enforcement of same, it may be that the Municipality can escape liability unless there is some proven negligence on the part of the Municipality or its employees.

If the Municipality has not adopted a by-law, it is difficult to

*Council  
This refers back to the  
original letter from Mr. G. Eichel.  
on Sept 20/84, and council discussing  
on Traffic by-law for the Village.  
Bd.*

November 22, 1984

envison circumstances where a Municipality would be liable for traffic violations or traffic accidents unless the Municipality or its employees were negligent and caused same. Even if the Municipality has no by-law, it should confirm this fact as a policy of the Municipality and an exercise of its discretion. There is some indication by the Courts that the absence of exercise of discretion may result in liability. The resolution should be carefully drawn and if you wish to proceed in that manner, we would be pleased to advise you regarding same.

In summary, therefore, if you have no by-law, it is unlikely that you would be subject to any liability arising out of traffic accidents in the absence of negligence on the part of the Municipality or its employees. Without a by-law of course, you cannot erect any signs or regulate traffic, as under Section 120 of the Motor Vehicle Act such regulations must be under a by-law. If you should decide to pass a by-law, it should be carefully drafted to avoid imposing any duty upon you to enforce same and it should be confined to the areas which you intend to enforce.

If we can be of any further help to you, please do not hesitate to call or write our office.

Yours truly,

~~McQUARRIE HUNTER~~

THEO. G. PEARCE

TGP/ms

c.c. - U.B.C.M.

Att'n: Mr. C.S.J. McKelvey

*Suggest we send Mr. Pearce to draft  
up a summary of resolution.*